

CITY OF BELLEVUE
CITY COUNCIL

Summary Minutes of Regular Session

March 17, 2003
8:00 p.m.

Council Chambers
Bellevue, Washington

PRESENT: Mayor Marshall, Deputy Mayor Degginger, and Councilmembers Creighton, Davidson, Lee, Mosher, and Noble

ABSENT: None.

1. Call to Order

The meeting was called to order at 8:09 p.m. by Mayor Marshall, who presided.

2. Roll Call, Flag Salute

Upon roll call by the City Clerk, all Councilmembers were present. Mr. Noble led the flag salute.

(a) Bellevue Dream Elite Cheerleading Squad Award

Ted Mittelstaedt, Senior Program Administrator, described the Bellevue Dream Elite program sponsored by the City's Recreation Division. The three-year-old program for ages 8 to 12 operates under the leadership of Ann Taylor and the assistance of Jacob Lewis. The cheerleading squad is already winning awards including first place at the 2002 Northwest Cheerleading Championships and third place at the Power Athletics National Championships last weekend. Ms. Taylor introduced Megan Tower, at fifth-grader at Lake Hills Elementary and member of the squad. Megan thanked Council for its support of the program and presented the award trophies to the City. The Bellevue Dream Elite squad performed a cheer for Council and the audience.

Mayor Marshall thanked the young women and their parents for participating in and supporting the program.

3. Communications: Written and Oral

- (a) Dorothy Webb and Chuck Kusak reflected on Bellevue's upcoming 50th birthday (March 31) and presented a gift from Kusak Cut Glass Works, Seattle, in honor of the occasion. The company was founded in 1914 by Mr. Kusak's grandfather, who immigrated from what is now the Czech Republic.
 - (b) Robert Whittlesey, a Youth Relay Director for Bellevue's 24-Hour Relay Challenge, invited everyone to two Bellevue 50Fest functions: 1) a Relay pre-event on Friday, April 4, 6:00-8:00 p.m., at Highland Community Center featuring dinner and a salsa band, and 2) *Every Student is a Winner* Event at Crossroads Mall, Sunday, March 30, noon to 5:00 p.m., which will provide information on schools and youth activities, entertainment, special guests, and demonstrations.
 - (c) Gitit Banai described her family's involvement in the Crossroads Youth Theatre program and thanked Council for its support. She invited Council and the public to see *The Last Unicorn* on March 21-23 or 27-30.
4. Reports of Community Councils, Boards and Commissions: None.
5. Report of the City Manager

City Manager Steve Sarkozy provided additional description for the public regarding select Consent Calendar items. Item 8(e) is part of the City's ongoing effort to assume responsibility for Native Growth Protection Areas and preserve them for the community. Item 8(f) authorizes the City Manager to accept a grant of \$150,000 from the Tateuchi Foundation to construct and maintain improvements at Bellevue Botanical Garden. Item 8(h) represents street overlays and curb, gutter and sidewalk rehabilitation in East Lake Hills, Northeast Bellevue, and on Bellevue Way between Main Street and NE 8th Street.

Mr. Sarkozy explained that plastic has been installed in the Factoria area to stabilize the steep slopes and avoid environmental damage from winter rains. The plastic will be removed in May and landscaping is anticipated to be fully established by next winter.

Mr. Sarkozy encouraged citizens to apply for upcoming Board and Commission vacancies by March 31.

6. Council Business

Council Business was reported in the earlier Study Session.

7. Approval of the Agenda

- ➡ Deputy Mayor Degginger moved to approve the agenda, and Mr. Noble seconded the motion.
- ➡ The motion to approve the agenda carried by a vote of 7-0.

8. Consent Calendar

Mr. Lee requested pulling item 8(n) for discussion.

➡ Mr. Degginger moved to approve the Consent Calendar, as amended, and Mr. Creighton seconded the motion.

➡ The motion to approve the amended Consent Calendar carried by a vote of 7-0, and the following items were approved:

- (a) Minutes of February 19, 2003 Special Meeting
Minutes of February 24, 2003 Extended Study Session
Minutes of March 3, 2003 Regular Session
- (b) Motion to approve payment of claims for the period ending March 10, 2003, and payroll for the period February 16 through February 28, 2003.
- (c) Resolution No. 6822 authorizing the write-off of 20 uncollectible accounts totaling \$23,297.47. *(Council action postponed from March 3 Consent Calendar.)*
- (d) Resolution No. 6827 authorizing the execution of a 2002-2004 labor agreement between the City and the Bellevue Police Management Association (BPMA).
- (e) Resolution No. 6828 authorizing the execution of an agreement to accept specific open space tracts from the Winfield Homeowners Association pursuant to Council direction to pursue City ownership and management of Native Growth Protection Areas throughout Bellevue.
- (f) Ordinance No. 5438 authorizing the execution of an agreement with the Tateuchi Foundation to accept grand funding for the development of the Tateuchi Viewing Pavilion at the Botanical Gardens; appropriating \$150,000 to the 2003-2004 General Fund Budget; and amending the Operating Budget adopted by Ordinance No. 5426.
- (g) Ordinance No. 5439 amending Ordinance No. 5390 that annexed to the City a 5.62-acre parcel located at 6114 164th Avenue SE and known as the Cole Annexation to correct deficiencies in the legal description.
- (h) Motion to award Bid No. 0312 for the 2003 Street Overlay Program which includes pavement repair and the rehabilitation of curbs, gutters, and sidewalks in the *East Lake Hills and Northeast Bellevue neighborhoods* and on Bellevue Way from Main Street to NE 8th Street in the amount of \$3,684,289.33 to Watson Asphalt Paving Company as low bidder. (CIP Plan Nos. PW-M-1 & PW-M-3)

- (i) Motion to approve Change Order Nos. 1, 2, and 3 for the construction contract with KLB Construction, Inc., (Bid No. 0225) increasing the contract amount by \$359,950 to a total of \$3,942,291 for the Factoria Boulevard Improvement Project. (CIP Plan No. PW-R-116) *(Reviewed with Council at the March 10 Extended Study Session.)*
- (j) Resolution No. 6829 authorizing the execution of a consultant agreement to provide geotechnical engineering services for the City-owned rockeries reconstruction program with Zipper Zeman Associates, Inc. in an amount not to exceed \$69,618. (CIP Plan No. PW-M-12)
- (k) Resolution No. 6830 authorizing execution of a professional services agreement with Diamond Parking, Inc. for the enforcement of on-street parking and off-street handicap parking in the Downtown in the amount of \$142,992 for two years, with an option for an additional two years in the amount of \$140,556.
- (l) Resolution No. 6831 authorizing the execution of a consultant agreement with INCA Engineers, Inc. for engineering service to prepare a single set of plans, specifications, and estimates that coordinate all infrastructure issues, including BP/Olympic Pipeline, water, sewer, and salmon recovery, to consolidate the Kamber Road roadway improvements and the Richards Creek culvert reconstruction projects in an amount not to exceed \$168,960. (CIP Plan Nos. PW-R-102 & D-71)
- (m) Resolution No. 6832 authorizing the execution of an agreement to relinquish certain access easement rights in favor of a new access easement for property located at 16262 SE 24th Street.

Item for Council Discussion:

- (n) Ordinance No. 5440 regarding eligibility for service on the City's Human Services Commission; and amending Bellevue City Code Section 3.61.030A.

Mr. Lee noted a person may not serve on the Human Services Commission if he or she is an employee or a member of the Board of Directors of an agency delivering services to City residents. Ordinance No. 5440 will allow employees, but not Board members, to serve on the Commission. Mr. Lee suggested allowing Board members to also serve, but the motion was not seconded.

- ☞ Mr. Noble moved to adopt Ordinance No. 5440, and Mr. Mosher seconded the motion.
- ☞ The motion to adopt Ordinance No. 5440 carried by a vote of 7-0.

9. Public Hearings

- (a) Limited public hearing on the appeal of T-Mobile (formerly VoiceStream) for a conditional use permit to replace a 68-foot high pole topped by three T-Mobile antennas co-located above existing AT&T antennas at the power substation near the corner of 156th Avenue SE and SE 16th Street. (File No. 01-119261)
(This is a Process III application because the site is located in the East Bellevue Community Council area. Under Process III, the Hearing Examiner provides a written recommendation to Council, which is the decision body. Should Council approve the application, the matter will be heard by the EBCC. Should Council deny the application, the decision is appealable to Superior Court.)

(NOTE: Presentation of oral arguments on the recommendation of the Hearing Examiner that the appeal of and the application by T-Mobile be denied is limited by Council Rules to 15 minutes for the applicant/appellant and 15 minutes for the respondents on information included in the record before the Hearing Examiner only.)

Mr. Sarkozy introduced the limited public hearing on the appeal of T-Mobile (formerly VoiceStream) for a conditional use permit to replace a 68-foot high pole topped by three T-Mobile antennas co-located above existing AT&T antennas at the power substation near the corner of 156th Avenue SE and SE 16th Street.

City Attorney Richard Andrews reviewed the rules and procedures for the limited public hearing and outlined alternatives for Council action. He said this is a limited public appeal hearing on Hearing Examiner File No. 01-119261-LB, AAD 02-300, to place a 90-foot pole topped by an array antenna. This is an appeal by T-Mobile of the Hearing Examiner's recommendation to the City Council that the permit be denied. This limited public appeal hearing is limited to the issues raised by the recommendation of the Hearing Examiner on the application for a conditional use permit. Mr. Andrews noted that any further review of the Hearing Examiner's decision on the environmental determination is not before the Council.

The parties to this appeal are the applicant, T-Mobile, which is the appellant, and the Director of the Department of Planning and Community Development, who is the respondent. Mr. Andrews said the appellant has requested that Council rule on a procedural issue first. Under the Council's rules on an appeal such as this, any party may submit written presentations based on the record made before the Hearing Examiner. The City Attorney, by the Council's rules, is then required to review those presentations and remove any information therein that is not within the record before the Hearing Examiner. The appellants timely submitted a written presentation to the Council, which Mr. Andrews reviewed and determined to contain information that was not within the record for purposes of this appeal. He redacted that material and the remainder of the submittal was forwarded to the Council.

Mr. Andrews explained that the appellant wishes to ask the Council to overrule his determination and allow the redacted material to be considered by the Council tonight. He suggested that the appellant be allowed to make the procedural request prior to the hearing being opened, and that the Council rule on it prior to opening the hearing, which will let the appellant know whether he may include that material in his argument.

The Director of Planning and Community Development will make a staff report describing the procedural history of the application. After Council opens the hearing, the parties will have an opportunity to present oral argument based on the Hearing Examiner's record. The appellant will proceed first and will have a total of 15 minutes for argument. If the appellant wishes to do so, he or she may reserve a portion of that time to be used for rebuttal argument after the conclusion of the presentation of the respondent. After opening argument by the appellant, the respondent Director of Planning and Community Development will have a total of 15 minutes for argument if he chooses, after which the appellant may argue in rebuttal to respondent's argument if time has been reserved for that purpose.

Mr. Andrews said Council may ask questions of any party or of staff or of any other person about any matter contained in the record. New material not contained in the record which was made before the Hearing Examiner may not be presented. After all argument is presented and after the Council has asked any questions it may have, the Council will have the opportunity to deliberate and render a decision. The Examiner's recommendation will be given substantial weight.

If the Council determines that the appellant has produced sufficient evidence to support the conclusion that there is an error or a defect in the proceedings, and/or that the recommendation of the Hearing Examiner is not supported by a preponderance of the evidence, it may: 1) grant the appeal and approve the application or, 2) grant the appeal and approve the application with conditions, or 3) remand the matter to the Hearing Examiner with instructions to conduct a further hearing and make a recommendation based on the evidence that is presented at that hearing and the prior testimony, or 4) continue this hearing to a time-certain and request further staff analysis prior to making a final decision on the recommendation. If the Council finds no error or defect in the proceedings, nor any factual basis for the appeal, it may deny the appeal and accept the recommendation of the Hearing Examiner that the application be denied.

Councilmember Noble asked whether Council's role represents a de novo review. Mr. Andrews said Council is entitled to make its own determination on the appeal if it determines that the appellant is persuasive that the Hearing Examiner's decision is not supported by a preponderance of the evidence. He said this is not a strict de novo review and the burden of persuasion is on the appellant.

Responding to Mayor Marshall, Mr. Andrews suggested allowing Mr. Kresovich to make his request before Council prior to opening tonight's public hearing.

Kate Berens, Legal Planner, provided the staff report. She displayed a site map showing the location at an existing Puget Sound Energy substation at 1555 SE 16th Street. The site is in the East Bellevue Community Council area, which makes the submittal a Process III application. In Process III applications, a recommendation is first made by the Director of the Department of Planning and Community Development. For this particular case, the Director recommended approval. There was then a public hearing before the Hearing Examiner. The Hearing Examiner issued a recommendation which is represented in the findings of fact, conclusions of law, and recommendation. The Hearing Examiner recommended denial of the conditional use permit.

Ms. Berens said the City Council will ultimately make the decision on this permit. If Council approves the conditional use permit, the final step is to go to the East Bellevue Community Council which can approve or disapprove the permit.

Ms. Berens described the site in greater detail, noting existing poles and an equipment cabinet. The proposal would consolidate two existing poles – one that functions as a Puget Sound Energy utility pole and a 68-foot pole with an AT&T wireless facility. This equipment would be combined onto one pole with a T-Mobile antenna on top, resulting in a height of 90 feet.

Ms. Berens noted that a portion of section 20.21.95 of the Land Use Code has been provided in Council's desk packets. The Land Use Code criterion are centered on two hierarchies – a land use district hierarchy and a design hierarchy. The Director's recommendation found compliance with all of those criterion. Ms. Berens said the City received information from the applicant, T-Mobile, about coverage needs in the form of coverage maps. They identify the areas within which coverage must be improved and they also provide information about the geographic area within which T-Mobile needs to site a facility to meet that coverage need. The geographic area where a facility is needed is typically referred to as the search ring. In this case, the search ring was a tenth of a mile in radius and all of the area encompassed within the search ring was a residential land use district, which is the least preferred area on the land use district hierarchy.

Staff looked beyond the search ring to the nearest non-residential land use districts in working through this application. The closest location identified was one on 148th Avenue containing multi-family and office zoning. There was already a facility proposed at that site and an active application by T-Mobile, which would not meet the coverage objectives for the permit in question. Other non-residential areas are approximately a mile away so well outside of the search ring. As a result of this research, staff concluded that the land use district hierarchy had been satisfied.

Responding to Deputy Mayor Degginger, Ms. Berens said the project was modified to decrease the initial proposed pole height of 100 feet to 90 feet. Additional measures to minimize adverse impacts include screening, the consolidation of two existing poles on the site within this one pole, and the blending of that pole with other utility poles in the vicinity in terms of color and how it will look on the site.

Mr. Noble noted that the property to the north of the site, across SE 16th Street, is a park and a portion of the Lake Hills Greenbelt. Ms. Berens confirmed that the park is zoned as residential but not currently developed as a residential use.

Mayor Marshall asked the appellant's attorney to present the procedural request.

George Kresovich, Hillis Clark Martin & Peterson, spoke on behalf of T-Mobile. He asked Council to overrule the City Attorney's decision to redact certain material in his appeal letter and in the attached letter from the appellant, Mr. Schroeder. He feels the information should appropriately come before the City Council because the only other party, Mr. Schroeder, decided to withdraw his appeal on the SEPA (State Environmental Policy Act) determination subsequent

to the hearing before the Hearing Examiner. Mr. Kresovich noted that this action after the hearing could not have been contained in the record made before the Hearing Examiner.

Mr. Kresovich asked Council to overrule the City Attorney's decision to redact the material. If not, he asked Council to remand the matter to the Hearing Examiner so the information can be properly put in the record for Council's consideration.

Responding to Mr. Noble, Mr. Kresovich said he feels the information is material enough to affect the Hearing Examiner's decision.

Responding to Deputy Mayor Degginger, Mr. Andrews said he redacted the material because it was submitted after the Hearing Examiner rendered his decision. He noted that the fact that the DNS (Determination of Non-Significance) appellant had withdrawn his appeal was left in the redacted document, because it is a matter of public record. However, Mr. Schroeder's reasons for withdrawing his appeal did not relate to the DNS but rather to the conditional use. Mr. Andrews noted that no party has had the opportunity to comment on or cross-examine that witness as to those reasons. He feels if Council were to look at those reasons and consider them tonight, it would be error on the part of the Council because it would render its decision vulnerable to attack in the subsequent appeal. Mr. Andrews said state law requires only one open record hearing on a matter. If Council wants to hear the reasons why the DNS appellant withdrew his appeal, Mr. Andrews recommends Council remand it to the Hearing Examiner for consideration.

Responding to Mr. Noble, Mr. Andrews opined that the additional, redacted information is material enough to affect the Hearing Examiner's decision.

Responding to Mr. Degginger, Mr. Andrews said the letter was submitted after the Hearing Examiner had rendered his decision. Under the Hearing Examiner's Rules, once a decision is issued and there is no pending motion for clarification or reconsideration, the Examiner loses jurisdiction.

➡ Mr. Noble moved to remand the matter to the Hearing Examiner for consideration of the redacted information, and Dr. Davidson seconded the motion.

➡ The motion to remand the matter to the Hearing Examiner for consideration of the redacted information carried by a vote of 6-1, with Deputy Mayor Degginger dissenting.

10. Land Use: None.

11. Other Ordinances, Resolutions and Motions: None.

12. Unfinished Business: None.

13. Continued Oral Communications: None.

14. New business: None.
15. Executive Session: None.
16. Adjournment

At 9:06 p.m., Mayor Marshall declared the meeting adjourned.

Myrna L. Basich
City Clerk

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